

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

OAK VALLEY INVESTMENTS, L.P.,	:	
	:	
Plaintiff,	:	
vs.	:	MEMORANDUM DECISION
	:	and ORDER DENYING MOTION
VAL E. SOUTHWICK, VESCOR CAPITAL	:	FOR RELIEF FROM
CORP., VESCOR DEVELOPMENT, LLC, SHAWN	:	PROTECTIVE ORDER
H. MOORE, VESCORP CAPITAL, LLC, APEX	:	
HOLDING 1, LLC, APEX HOLDING 2, LLC,	:	Civil No. 2:06-CV-737 DB
APEX HOLDING 3, LLC, APEX HOLDING 4,	:	
LLC, APEX HOLDING 5, LLC, APEX	:	District Judge Dee Benson
HOLDING 6, LLC, and APEX HOLDING 23, LLC,	:	
	:	Magistrate Judge David Nuffer
Defendants and Third-Party Plaintiffs,	:	
vs.	:	
	:	
BRIAN Y. HORNE and DOES 1 through 10,	:	
	:	
Third-Party Defendants.	:	
	:	
<hr/> JONATHAN H. HORNE, M.D., as Trustee for	:	
Jonathan H. Horne, M.D., P.C. Retirement Plan Trust	:	
Fund,	:	
	:	
Plaintiff,	:	
vs.	:	
	:	
VAL E. SOUTHWICK, VESCOR CAPITAL	:	
CORP., VESCOR DEVELOPMENT, LLC, APEX	:	
MM, INC., SHAWN MOORE, VESCORP	:	
CAPITAL, LLC, and VEGAS VISTA 6, LLC,	:	
	:	
Defendants and Third-Party Plaintiffs,	:	
vs.	:	
	:	
BRIAN Y. HORNE and DOES 1 through 10,	:	
	:	
Third-Party Defendants.	:	

Plaintiffs, Oak Valley Investments, L.P. and Jonathan H. Horne, M.D. as Trustee for Jonathan H. Horne, M.D., P.C. Retirement Plan Trust Fund (collectively “Horne”) request relief from the stipulated protective order entered in this case so that they may produce documents in response to a subpoena from Gerry D’Elia, the plaintiff in a case pending against some of the same defendants, case no. 070500228, in the Third Judicial District Court, in and for Summit County, State of Utah.¹ Plaintiffs further request that the protective order “be modified to allow plaintiffs to produce documents in response to any subpoena issued in any case in which Southwick or the corporate defendants are named as parties.”²

Defendants oppose the motion, noting that D’Elia’s pending state litigation relates to a different investment³ and discovery has not commenced in that case.⁴ Defendants further contend that D’Elia has not appeared or intervened to make any showing that the documents requested from this case are relevant or discoverable in his own case, and D’Elia has not requested the documents directly from Defendants in the state litigation so that “defendants could have raised their objections there.”⁵ Defendants are also concerned about releasing documents marked confidential in this case because that there is no protective order in place in the state litigation.⁶ Defendants suggest that the more “[a]ppropriate procedure would demand that Dr.

¹Plaintiffs’ Motion for Relief from Protective Order, dkt. no. 239.

²*Id.* at 3.

³Memorandum in Opposition to Motion for Relief from Protective Order (Opposition) at 2, dkt. no. 248; Response to Plaintiffs’ Motion for Relief from Protective Order (Response) at 1, dkt. no. 240.

⁴Opposition at 2.

⁵*Id.* at 3.

⁶*Id.*

Horne object to the subpoena and invite Mr. D'Elia to come before this Court and justify his broad requests.”⁷

Although Plaintiffs may “have second thoughts about signing the protective order based on defendants’ conduct in this case,”⁸ they did stipulate to the protective order entered in this case. Further, the court has no information from D’Elia and there is no record whether these documents are relevant or discoverable in his state case.

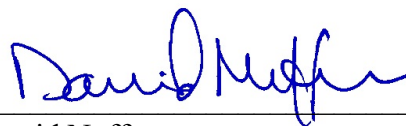
ORDER

IT IS HEREBY ORDERED that Plaintiffs’ Motion for Relief from Protective Order is DENIED.⁹

It appears that Plaintiffs’ additional request for relief from the protective order to respond to the subpoena issued by the Utah Division of Securities after the original motion was filed¹⁰ has been resolved through consent of the parties.¹¹

December 13, 2007

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

⁷*Id.*

⁸Supplemental Reply Memorandum in Support of Plaintiffs’ Motion for Relief from Protective Order at 3 n.1, dkt. no. 250.

⁹Dkt. no. 239.

¹⁰Reply Memorandum in Support of Plaintiffs’ Motion for Relief from Protective Order at 3, dkt. no. 245.

¹¹Letter from Rodney Parker to Judge David Nuffer, copied to Counsel of Record (Nov. 9, 2007) (on file with court).